

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MASSACHUSETTS

Civil Action No.

04 MBD 10347

ORTHOTEC, LLC,
Plaintiff,
v.
HOLMED CORPORATION,
Defendant.

PLAINTIFF ORTHOTEC, LLC'S
MOTION TO COMPEL COMPLIANCE WITH
SUBPOENA DUCES TECUM AND MOTION FOR
SANCTIONS IN THE FORM OF AN AWARD
OF ATTORNEYS' FEES AND COSTS

Plaintiff OrthoTec, LLC, ("OrthoTec") hereby moves this Court for an Order: (i) compelling defendant Holmed Corporation ("Holmed") to produce each and every document requested in the Deposition Subpoena served by OrthoTec on Holmed on August 20, 2004 ("Deposition Subpoena"); and (ii) imposing sanctions on Holmed in the form of an award of attorneys' fees in the amount of \$5,980 and costs in an amount to be determined to compensate OrthoTec for its filing fees and expenses incurred in serving this Motion on Holmed.

As grounds for this motion, and as more fully set forth in OrthoTec, LLC's Memorandum In Support Of Motion To Compel Compliance With Subpoena Duces Tecum And Motion For Sanctions In The Form Of An Award Of Attorneys' Fees And Costs, in the Affidavit Of Michael J. Perry, and in the Affidavit Of Attorney Christine P. Deshler, Esq., all filed herewith, OrthoTec states

that Holmed has willfully and without justification failed and refused to comply with a properly served Deposition Subpoena for the production of business records. The documents requested in the Deposition Subpoena are relevant to the claims and defenses asserted in the civil case pending in the United States District Court for the Central District of California, USDC Case Number CV03-8346, and are not privileged. Holmed's refusal to produce these documents has caused OrthoTec to incur fees and costs in excess of \$5,980.

REQUEST FOR ORAL ARGUMENT AND HEARING

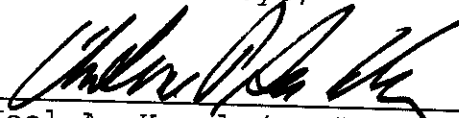
Pursuant to Local Rule 7.1(D), the plaintiff OrthoTec, LLC hereby requests oral argument on its motion.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

OrthoTec, LLC certifies that, in an attempt to resolve or narrow the issues addressed in this motion, the parties conferred via telephone on September 28, 2004 for approximately one hour. In addition, both before and after that telephonic meeting, the parties exchanged correspondence on several occasions. Those matters on which the parties could not come to an agreement are the subject of this motion.

ORTHOTEC, LLC,

By its attorneys,



Joel A. Kozol (BBO#278620)
Christine P. Deshler (BBO#548206)
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Date: December 1, 2004